IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 869 of 2007

Judgement reserved on:

Date of decision: 11.12.2007.

State of H.P. **…..Petitioner- Appellant.**

Vs.

Subhash Kumar **…. Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the petitioner : Mr. M.L.Chauhan, Addl. Advocate General.

For the Respondents :

Kuldip Singh, Judge (Oral).

This is an application of the State, seeking leave to file an appeal against the judgement, dated 12.9.2007, passed by learned Chief Judicial Magistrate, Solan in Criminal Case No.2/2 of 2000, acquitting the respondent under Section 279, 337, 338 IPC and Section 182 of the Motor Vehicles Act, 1988.

2. The prosecution case in brief is that PW 8 Sandip Kumar driver alongwith PW 7 Satya Parkash and PW 1 Hira Lal army personnel were going from Kasauli to Dagsai in Army truck No. 96-D-102181, the respondent who was driving maruti van No. HP-01-0476 in fast speed could not control the van and thereby struck with the

---

Whether the reporters of the local papers may be allowed to see the Judgment?

aforesaid Army truck at place near Kapil Hotel, Kasauli road. The occupants of the van sustained injuries in the accident. The statement of PW 8 Sandip Kumar was recorded, under Section 154 Cr.P.C. and on that basis FIR Ex.PW 5/B was registered. After conclusion of the investigation, challan was put up against the respondent, notice of accusation, under Sections 279, 337, 338 IPC and Section 182 of the Motor Vehicles Act was put to respondent to which he pleaded not guilty. The prosecution examined eight witnesses. The statement of respondent was recorded, under Section 313 Cr.P.C., he denied the prosecution case. Devinder Thakur witness was examined in defence. The learned Chief Judicial Magistrate acquitted the respondent, hence this application.

3. Heard. PW 3 Kumari Neelma was travelling in the van, but she could not tell whether respondent was driving the vehicle, she was declared hostile. She denied that respondent was driving the vehicle in fast speed and in negligent manner or the accident took place due to the negligence of the respondent. PW 7 in his cross examination has admitted that there is a curve near the place of accident in addition to bushes. The road at the spot is narrow. He denied that the truck driver was negligent in driving the truck. PW 8 Sandip Kumar driver of the truck has stated that driver of the maruti van struck his vehicle against the truck and caused the accident. He was confronted with affidavit Ex. DX which was signed by him, but he denied that it has been recorded in affidavit Ex. DX that respondent was not at fault for causing the accident. PW 2 Yoginder Kumar, Mechanic has not found any mechanical defect in the van as well as

in the Army truck. PW 6 SI Surinder Kumar has denied that Army truck had removed the injured to the hospital. He, however, admitted that all injured were removed to the hospital before he reached the spot. The learned Chief Judicial Magistrate has recorded a finding that maruti van was going uphill from Dharampur from Kasauli, whereas the Army truck was going downhill.

4. PW 1 has claimed that the injured were removed to the hospital, which shows that the Army truck was removed from the spot and the injured were taken to the hospital. When the maruti van was going uphill, it cannot be said that it was being driven in high speed by the respondent and he could not control the van. PW 3 Kumari Neelma the eye witness has not supported the prosecution case. The respondent has examined D.K.Thakur, Notary Public, who attested the affidavit Ex. DX of the complainant in which it has been stated that respondent was not at fault. It is not the case of the complainant that the affidavit was executed under some pressure. It has been proved that affidavit Ex. DX was voluntarily executed by the complainant. In the said affidavit, the complainant has stated that respondent was not at fault. The driving licence of the respondent Ex. DY has been placed on record. The learned Chief Judicial Magistrate has taken a possible view from the material on record. No case has been made out for granting leave. Hence, petition is rejected.

December 11, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**